(24,939)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 656.

MAX JAFFE ET AL., SURVIVING MEMBERS OF THE FIRM OF KNAUTH, NACHOD & KUHNE, APPELLANTS,

vs.

WILLIAM S. LOVELL, AS CUSTODIAN, &c., AND AS TRUSTEE IN BANKRUPTCY OF KNIGHT, YANCEY & COMPANY, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 9, 1915.

Amended Bill.

District Court of the United States,

NORTHERN DISTRICT OF FLORIDA.

FRIEDRICH NACHOD, MAX JAFFE, WILHELM KNAUTH, AUGUST STERN, OSCAR L. GUBELMAN, AREND H. WEINGARDT, ROLLIN C. NEWTON, MARY W. KNAUTH, and PERCIVAL KUHNE,

Complainants,

AGAINST

WILLIAM S. LOVELL, as the Custodian of certain property impounded by the above named Court and as Trustee in Bankruptcy of Knight, Yancey & COMPANY; EDMOND LATHAM; CHARLES W. LATHAM; RAOUL LATHAM; AMERICAN NATIONAL BANK of Pensacola; FIRST NATIONAL BANK of Pensacola; LOUISVILLE & NASHVILLE RAILROAD COMPANY; and AMERICAN SURETY COMPANY OF NEW YORK,

Defendants.

In Equity.

The complainants above named, Knauth, Nachod & Kuhne, make this their amended bill of complaint (or

whatever it should be denominated) against the defend-
4 ants above named and allege, on information and belief:

FIRST—NAME, ETC. OF PARTIES.

1. The complainants are copartners in business, doing business as international bankers and maintaining a banking house at New York, N. Y., and at Leipzig, Germany, under the firm name and style of Knauth, Nachod & Kuhne. Said Friedrich Nachod, Max Jaffe and August Stern are citizens or subjects of Germany and reside at Leipzig, Germany. Said Wilhelm Knauth is a citizen or subject of Germany and resides at Arrochar, County of Richmond, City and State of New
5 York. Said Arend H. Weingardt is a citizen or subject of Germany and resides at Montclair, Essex County, New Jersey. Said Oscar L. Gubelman is a citizen of the State of New Jersey and resides at West Orange, Essex County, New Jersey. Said Rollin C. Newton is a citizen of the State of New York and resides at Scarsdale, Westchester County, New York. Said Mary W. Knauth and Percival Kuhne are citizens of the State of New York and reside in the County, City and State of New York.

2. The defendant William S. Lovell as the Custodian of certain property impounded by the above named
6 Court and as Trustee in Bankruptcy of Knight, Yancey & Company, is a citizen of the State of Alabama and resides at Birmingham, Jefferson County, Alabama, and was appointed as said Custodian by this Court and was appointed as said Trustee by the United States District Court for the Northern District of Alabama, Northeastern Division. The bankrupts, Knight, Yancey & Company, were a co-partnership firm and had their General Office at Decatur, Morgan County, Alabama, where the active partner, John W. Knight, resided and managed the business of the firm. The defendants Edmond Latham, Charles W. Latham and Raoul Latham are

co-partners in business doing business at Havre, France, 7
under the firm name and style of Latham & Company. They are all citizens of the French Republic and reside at Havre, France. The defendants American National Bank of Pensacola and First National Bank of Pensacola are each of them a corporation organized under the laws of the United States and each of them has its home office and its place of business at Pensacola, Florida. The defendant Louisville & Nashville Railroad Company is a corporation organized under the laws of the State of Kentucky and has it home office at Louisville, Ky., but it also does a regular business and maintains a regular place of business at Pensacola, Florida. The defendant American Surety Company of New York 8
is a corporation organized under the laws of the State of New York and has its home office at New York, N. Y., but it also does a regular business and maintains a regular agency at Pensacola, Florida.

SECOND—JURISDICTION.

1. On or about the 11th day of May, 1910, upon the petition of William S. Lovell and Clarence E. Frost, as Receivers in Bankruptcy of Knight, Yancey & Company, and Joe T. Gibson, an unsecured creditor of said bankrupts, this Court duly granted an injunction order in an ancillary bankruptcy proceeding in this Court, entitled 9
"In the Matter of Knight, Yancey & Company, Bankrupts", by which order the Court enjoined and restrained the defendant Louisville & Nashville Railroad Company, among others, "from moving or in any way disposing of any cotton" in its possession or under its control, upon shipments by or for the account of Knight, Yancey & Company, and decreed that said railroad company was "required to hold said cotton pending the further orders of this Court." The cotton set forth in Schedule 1 and Schedule 2, hereto annexed and made a part hereof, was

among the cotton then in the possession of said railroad company at Pensacola, Florida, and under its control, upon shipments by and for the account of Knight, Yancey & Company. Said order was duly served on said railroad company and thereupon the Court acquired dominion over said cotton and the potentiality of possession thereof and on exclusive jurisdiction thereover.

2. Thereafter and on or about the 11th day of June, 1910, the defendant, William S. Lovell the Trustee in Bankruptcy of Knight, Yancey & Company, instituted suit in equity in this Court against the defendants Latham & Company and the defendant Louisville & Nashville Railroad Company. Said suit was brought for the purpose of having said injunction continued and for a delivery of said cotton to said Trustee. Said injunction order was confirmed and continued by the Court by an order entered July 8, 1910. Said last mentioned order also directed that the cotton set forth in Schedule 1 hereto annexed should be delivered by said railroad company to said William S. Lovell as the Custodian of the Court and that, after the receipt thereof by said Custodian, the defendants Latham & Company might obtain the same by filing with the Court a prescribed bond in place thereof. The prescribed bond was duly executed by the defendants Edmond Latham, Charles W. Latham, Raoul Latham and American Surety Company of New York and filed in this Court on or about July 8, 1910. The cotton set forth in said Schedule 1 was duly delivered to said Custodian by said railroad company. On the filing of said bond, said cotton was then duly delivered by said Custodian to the defendants Latham & Company. The condition of said bond was, briefly, that the value of said cotton with interest would be forthcoming to answer the final decree of the Court. Said order also provided that the said William S. Lovell as Custodian of the Court should sell the cot-

ton set forth in Schedule 2 hereto annexed, at the best 13
price obtainable, and deposit the proceeds thereof in the First National Bank of Pensacola, Florida, at the best rate of interest obtainable; and that said funds should be held in said bank, to abide the final decree of the Court, "in exactly the same way that said cotton would be held had the Court not ordered the same sold." Said William S. Lovell as Custodian thereupon sold said cotton and the proceeds thereof remain on deposit to the credit of said Custodian and subject to the decree of the Court. The money so deposited amounts to $72,975.85 or more. The defendants Latham & Company answered said bill of complaint by an answer filed August 9, 1910. The defendant Louisville & Nashville 14
Railroad Company answered said bill of complaint by answer filed September 19, 1910. The said suit is still pending and undetermined.

3. The complainants, Knauth, Nachod & Kuhne, assert an interest in a part of said cotton and in the bond therefor and in the proceeds thereof that is prior and paramount both to that of said Latham & Company and to that of said Lovell as Trustee. The property is in this district. The matter in controversy exceeds the sum or value of three thousand dollars, exclusive of interest and costs, and arises under the Constitution and laws of the United States. The said suit instituted by 15
said Lovell as Trustee was between a citizen of a State and foreign citizens. This suit is between citizens of different States. Said Lovell as Trustee bases his claim on Section 70 and other provisions of the Bankruptcy Act. The complainants, Knauth, Nachod & Kuhne, base their claim on the laws of the United States, as well as the laws of different States, including Section 70 and other provisions of the Bankruptcy Act. So far as the complainants Knauth, Nachod & Kuhne are concerned, however, jurisdiction is predicated, without waiving

16 other grounds, on the fact that the Court, in equity, has impounded the subject matter or *res* of the controversy within its exclusive jurisdiction and that they have the right, therefore, to have their claim thereto heard and determined herein.

THIRD—FACTS.

1. During the period from the 5th to the 18th days of April, 1910, and prior thereto and thereafter until their adjudication of bankruptcy, John W. Knight, of Decatur, Alabama; William J. Yancey, of Memphis, Tennessee; William D. Nesbitt of Birmingham, Alabama; and Robert
17 H. Nesbitt, of Spartanburg, South Carolina, were co-partners in business doing business at Decatur, Alabama, under the firm name and style of Knight, Yancey & Company, as dealers on cotton. They also maintained branch offices at various other places, particularly at Selma, Ala., and Mobile, Ala. During the said period and until their adjudication of bankruptcy and down to the present time, said Knight, Yancey & Company were hopelessly insolvent and knew that they were insolvent and unable to pay their debts. All the acts of said Knight, Yancey & Company hereafter set forth were committed by them while insolvent and while they knew that they were insolvent and unable to pay their honest debts.

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2. During said period from the 5th to the 18th days of April, 1910, the firm of Knight, Yancey & Company caused to be issued and sent to New York, N. Y., some thirteen drafts or foreign bills of exchange to which were attached, among other things, thirteen export bills of lading purporting to show that thirteen hundred (1300) bales of cotton had been delivered by said Knight, Yancey & Company to common carriers for transportation to Liverpool, England, and to Bremen, Germany, and to Reval, Russia, or to other European ports, and for

delivery, at the various ports of destination, to the order 19
of said Knight, Yancey & Company, some of said bills of lading purporting to have been issued by the Southern Railway Company and some purporting to have been issued by the Louisville & Nashville Railroad Company. Said drafts were drawn to the order of Knight, Yancey & Company; and the cotton mentioned in said bills of lading was to be delivered to the order of said Knight, Yancey & Company; and the insurance certificates thereto attached were payable, in case of loss, to said Knight, Yancey & Company; and all were indorsed by said Knight, Yancey & Company. Said drafts, bills of lading and other papers were forwarded to New York for the purpose of having the same sold and delivered to the com- 20
plainants, Knauth, Nachod & Kuhne, or other purchasers, as genuine and valid documents and with the intent that said Knauth, Nachod & Kuhne, or other purchasers, should be misled and deceived into the belief that the said bills of lading were genuine and represented actual shipments of the thirteen hundred (1300) bales of cotton therein mentioned and should purchase said foreign drafts on the strength of said bills of lading. Said Knauth, Nachod & Kuhne were in fact misled and deceived and did believe that said bills of lading were genuine and represented actual shipments of the thirteen hundred (1300) bales of cotton therein mentioned; and, on the faith thereof, took and received the said bills of 21
lading with the drafts prefixed thereto and delivered over the sum of $98,005.58, except that $154.20 thereof were protest fees and cable charges subsequently paid on account of said drafts.

3. Some of said drafts matured ninety days after sight and the rest sixty days after sight. The following is a statement of the date of each of the said drafts; the date of each of the said bills of lading thereto attached; the number of bales and marks of the cotton; and the amount

22 of each of the said drafts, your orators being ready to file a copy of said drafts and of the bills of lading thereto annexed and to produce the originals thereof as the Court may direct, to wit:

Date of Draft, 1910.	Date of B/L 1910.	Number of Bales of Cotton and Marks.	Amount of Drafts.
April 9	April 9	100 PALM—Reichsmarks	31,604.
" 9	" 9	100 QEKP— "	31,394.
" 9	" 9	100 RBUZ— "	31,650.
" 11	" 9	100 QHNN—Francs	38,924.
" 8	" 8	100 PAIY —Sterling	1571- 5- 8.
" 8	" 8	100 PUUN— "	1579-17-11.
" 8	" 8	100 QAAR— "	1560-18- 6.
" 8	" 8	100 QUHH— "	1574-13- 1.
" 8	" 8	100 RFFF— "	1574- 3- 1.
" 8	" 8	100 RUKR— "	1578- 3- 0.
23 " 8	" 7	100 QRRT— "	1548-15- 9.
" 8	" 7	100 QAJJ— "	1534-16- 7.
" 8	" 7	100 QFNK— "	1541- 8- 0.

4. The bills of lading annexed to said drafts were not signed or issued by the railroad companies mentioned therein. The cotton mentioned in said drafts and bills of lading was never delivered to the railroad companies. On the contrary, said bills of lading were signed either by said John W. Knight, or other persons unknown at this time to said Knauth, Nachod & Kuhne. No cotton was ever delivered on said bills of lading by the carriers to complainants or to any one else as the indorsee of said
24 Knight, Yancey & Company. The drawers, Knight, Yancey & Company had not provided for the acceptance of said drafts and had not provided the drawees of said drafts with funds with which to pay the same. Said drafts were duly presented for acceptance, before said Knauth, Nachod & Kuhne had any knowledge of the said fraud, and acceptance thereof was refused. Said drafts were duly protested for non-acceptance and due notice thereof given to said Knight, Yancey & Company and to all other parties thereto, at an expense to said Knauth, Nachod & Kuhne, in protest fees and cable charges of

$154.20. Neither said drafts nor said protest fees and 25
cable charges, nor any part thereof, have ever been paid to the complainants, Knauth, Nachod & Kuhne. Said Knight, Yancey & Company, and all other persons acting with them in the execution, issue and delivery of said instruments, knew at the time that no cotton had been delivered to the railroad companies and knew that said Knauth, Nachod & Kuhne, or other purchasers, would rely on the same as being genuine and representing actual shipments of cotton and knew that the said Knight, Yancey & Company were insolvent and had no means of repaying the money obtained on said instruments and committed all of said acts for the purpose of obtaining, on the strength of said false documents and said false and 26
fraudulent representations, from said Knauth, Nachod & Kuhne, or others, the said sum of $98,005.58. No cotton has ever been received by said Knauth, Nachod & Kuhne, or by any one else on account of the said bills of lading. Since the discovery of the said fraud, the complainants, Knauth, Nachod & Kuhne, have in no wise affirmed or ratified the transaction or transactions resulting in the delivery over of their said money to the said Knight, Yancey & Company, but, on the contrary, have sought to obtain and have demanded and hereby again demand the return to themselves, as the owners entitled thereto, of their said money (the amount being the sum of $98,-005.58) and demand that said Knight, Yancey & Com- 27
pany and their successors, including said William S. Lovell as their trustee in bankruptcy, account for the said money and for the cotton or other property paid for therewith, or with the proceeds thereof, and reimburse said Knauth, Nachod & Kuhne therefor, with interest thereon from April 18, 1910, at 8% per annum, the legal rate in Alabama. The complainants, Knauth, Nachod & Kuhne are ready, and hereby offer, to surrender the said drafts, bills of lading and other documents upon being reimbursed for the said $98,005.58, with interest; or upon such other terms as the Court shall decree.

28 5. The drafts hereinbefore set forth were forwarded to New York, N. Y., and there sold by said Knight, Yancey & Company to the complainants, Knauth, Nachod & Kuhne, through the instrumentality of the First National Bank of Decatur, Alabama, and its New York correspondent and one Frederick van Gerpen, as the agent and broker of said Knight, Yancey & Company. Said Knight, Yancey & Company utilized said instrumentalities for the further purpose of obtaining from said First National Bank of Decatur the allowance of over-drafts in payment of the price of certain cotton purchased by them. Said Knight, Yancey & Company was engaged in the business of buying and exporting
29 cotton. On the days when said drafts were forwarded to New York, said Knight, Yancey & Company also drew certain drafts on said Frederick van Gerpen, in money of the United States, which drafts were referred to as "currency" drafts to cover them from said drafts in foreign money, referred to as "foreign" drafts. Said currency drafts together with said foreign drafts and pretended bills of lading as collateral thereto, were deposited by said Knight, Yancey & Company in said First National Bank of Decatur for collection and as security for the repayment of certain over-drafts made by said Knight, Yancey & Company in payment of the price of certain cotton purchased by them. Said over-
30 drafts were also secured by the pledge by said Knight, Yancey & Company of the cotton paid for therewith or other cotton pledged in lieu thereof. Said over-drafts were allowed and said pledge effected by taking up drafts accepted by said Knight, Yancey & Company, with compress (Warehouse) receipts or bills of lading attached, and by the payment of checks for cotton on the delivery of compress receipts or bills of lading therefor. The allowance of said over-drafts on the pledge of the cotton thus paid for was in accord with the usages and custom of the business and said First National Bank of Decatur claims that it acted in good faith. The resources of the

local banks were not adequate to finance the business by 31
accepting a pledge of said foreign drafts, payable sixty and ninety days after sight, and it was a usage and custom of the business to sell such foreign drafts in New York. Said currency drafts, with said foreign drafts and accompanying documents as collateral, were employed as a means both of obtaining and securing said overdrafts and of facilitating the remittance of the proceeds of said foreign drafts. Said First National Bank of Decatur also held as security for said over-drafts the acceptance, *pro forma,* of a third party, in compliance with the requirements of the Comptroller of the Currency, but the pledged cotton was regarded as the principal security. Said First National Bank of Decatur forwarded said 32
currency drafts, together with said foreign drafts and pretended bills of lading and other documents as collateral thereto, to its correspondent in New York, N. Y., for collection and credit. On the arrival in New York of said currency drafts together with said foreign drafts and pretended bills of lading and accompanying documents, said foreign drafts and pretended bills of lading and accompanying documents were intrusted to said Frederick van Gerpen, as the agent or broker of said Knight, Yancey & Company, and by said broker or agent sold to the complainants, Knauth, Nachod & Kuhne, as hereinbefore set forth. Upon the sale thereof said Knauth, Nachod & Kuhne paid their money to said agent 33
or broker of said Knight, Yancey & Company, upon the faith of said foreign drafts and pretended bills of lading as hereinbefore set forth. Said agent or broker of said Knight, Yancey & Company then took up said currency drafts with the money of said Knauth, Nachod & Kuhne and paid the amount thereof to said correspondent in New York of said First National Bank of Decatur together with certain moneys of said Knight, Yancey & Company. Said correspondent thereupon and on the days of the receipt of said moneys from said agent or broker placed the amount thereof, including the moneys of said Knauth, Nachod & Kuhne, to the credit of said

First National Bank of Decatur and notified said First National Bank of Decatur thereof by mail. Said notice was received by said First National Bank of Decatur in due course of mail before business hours on the second day thereafter. On receipt of said notices, if not before, said currency drafts were collected by said First National Bank of Decatur and the moneys, including the moneys of said Knauth, Nachod & Kuhne, were held for the account of said Knight, Yancey & Company subject to the repayment of said over-drafts.

6. During said period from the 5th to the 18th days of April, 1910, and prior thereto and thereafter, it was a usage and custom of the business between bankers and their customers in the State of Alabama, including Decatur, for customers, such as Knight, Yancey & Company, to deposit drafts on out-of-town parties, such as said currency drafts on Frederick van Gerpen, for collection and upon the understanding and agreement that the customer should retain the title until collection, remittance and receipt by the depositary bank. It was also a usage and custom of said business in the State of Alabama, including Decatur, for banks accepting such out-of-town drafts for collection, including said First National Bank of Decatur, to direct their collecting correspondent, particularly when collection was made in New York, N. Y., to credit the depositary bank with the proceeds thereof and to hold itself ready to pay the amount of said proceeds to or for the account of its customer upon receipt of notice of the collection thereof. During said period from the 5th to the 18th days of April, 1910, and prior thereto and thereafter, it was the law in the State of Alabama and generally in this country, particularly throughout the South, that a deposit in a bank of drafts upon out-of-town parties was for the purpose of collection; that the title to the instrument remained in the depositor until collection; that the title to the proceeds remained in the depositor until remittance and receipt by the depositary bank; and that, in cases of collection

and credit by a collecting correspondent of the depositary 37
bank, the collection was completed and the money deemed to be received by the depositary bank on receipt of notice that the draft had been collected and credited by such correspondent.

7. After said First National Bank of Decatur had received said moneys, including the moneys of said Knauth, Nachod & Kuhne, the same were all disbursed by said bank, at the instance of said Knight, Yancey & Company, in the purchase and redemption of certain cotton, including a part of the cotton or the bills of lading therefor set forth in Schedule 1 and Schedule 2 hereto annexed. Said Schedule 1 and Schedule 2 hereto annexed 38
include certain cotton or the bills of lading therefor, exceeding three thousand dollars in value, that was thus purchased and redeemed with said moneys of said Knauth, Nachod & Kuhne. The bond hereinbefore set forth remains on file in this Court in lieu of the cotton set forth in Schedule 1 hereto annexed and constitutes the proceeds thereof. The proceeds of the cotton set forth in said Schedule 2 hereto annexed remains on deposit at Pensacola, Florida, or elsewhere, as hereinbefore set forth and, being in part the proceeds of said moneys obtained by said false pretenses and no right of a purchaser for value and without notice having intervened, are subject to a trust or charge in favor of said Knauth, 39
Nachod & Kuhne, to the extent that it was purchased or redeemed with their said moneys or with the fund, including their said moneys, that was remitted to the First National Bank of Decatur as before set forth.

8. On or about the 20th day of April, 1910, said firm of Knight, Yancey & Company was duly adjudicated a bankrupt and on or about the 21st day of April, 1910, Clarence E. Frost and William S. Lovell were appointed Receivers in Bankruptcy of the estate of said firm and qualified, by giving the prescribed bond, and entered upon the performance of their duties as such Receivers.

40 On or about the 26th day of May, 1910, the defendant William S. Lovell was duly appointed trustee in bankruptcy for the estate of said firm and qualified, by giving the prescribed bond, and entered upon the performance of his duties as such Trustee. Neither the said Knight, Yancey & Company, nor their Receivers, nor their Trustee, nor any one else, have returned to the said Knauth, Nachod & Kuhne said $98,005.58, or any part thereof. Said William S. Lovell is still acting as said Trustee.

9. The defendant, William S. Lovell as Trustee in Bankruptcy of Knight, Yancey & Company, in his bill of complaint in the suit hereinbefore set forth, alleged
41 that the bills of lading for the cotton set forth in Schedule 1 and Schedule 2 hereto annexed were transferred to the defendants Latham & Company in payment or fulfillment of an antecedent indebtedness or obligation of the bankrupts, Knight, Yancey & Company, and that said transfer was made under facts and circumstances constituting a voidable preference. Said Trustee elected in said bill to avoid said transfer and asked that it be set aside and the cotton decreed to belong to him, said Trustee. The defendants Latham & Company in their answer to said bill denied that said bills of lading for the cotton set forth in Schedule 1 and Schedule 2 hereto annexed were transferred to them in payment of an antecedent indebtedness
42 but set forth as facts that said Knight, Yancey & Company had contracted to sell and said Latham & Company had contracted to buy some 7800 bales of cotton and that said Latham & Company had paid the price of said cotton in advance of the shipment thereof and that thereafter said Knight, Yancey & Company transferred the bills of lading for said cotton, together with those for certain other cotton, in performance of said contract of sale. Said Latham & Company also alleged that said Knight, Yancey & Company held said bills of lading in trust for their benefit and merely delivered the same in the execution of such a trust. The facts are that said Latham & Com-

pany, on or about April 14, 1910, demanded the delivery 43
of some 7800 bales of cotton claimed to be due them from said Knight, Yancey & Company on account of an antecedent contract of sale and, on said demand, obtained the bills of lading for the cotton set forth in Schedule 1 and Schedule 2 hereto annexed, without any new or other consideration therefor.

10. At the time when the defendants Latham & Company obtained from the bankrupts, Knight, Yancey & Company, the bills of landing for the cotton set forth in Schedule 1 and Schedule 2 hereto annexed, the said Knight, Yancey & Company were insolvent and knew that they were insolvent and intended, by the delivery 44
of said bills of lading, to give to said Latham & Company a preference over other creditors of the same class. At the time said Latham & Company received said bills of lading, they had reasonable and probable cause to believe, and did in fact believe, that the said Knight, Yancey & Company were insolvent and were delivering said bills of lading to them with the intent to give them, said Latham & Company, a preference over the other creditors of the same class. Said bills of lading were obtained by said Latham & Company within four months immediately preceding the adjudication of bankruptcy of said Knight, Yancey & Company. No further credit was thereafter given by said Latham & Company to said 45
Knight, Yancey & Company, in good faith or otherwise, either with or without security. Said Latham & Company, having obtained said preference, cannot come into equity with clean hands. Furthermore, said Knight, Yancey & Company delivered said bills of lading to said Latham & Company, while insolvent and within four months immediately preceding their adjudication of bankruptcy, with the intent and purpose on their part to hinder, delay and defraud their other creditors, including said Knauth, Nachod & Kuhne with whose moneys a part of the cotton set forth in Schedule 1 and

Schedule 2 hereto annexed or the bills of lading therefor had been purchased and redeemed.

11. The bankrupts, Knight, Yancey & Company, obtained the moneys of the complainant, Knauth, Nachod & Kuhne, by false pretenses and held the same in trust for their benefit. Said bankrupts also held the entire fund or bank credit including said moneys subject to a trust or charge for their benefit. Said bankrupts then disbursed said entire fund or bank credit, including the moneys of said Knauth, Nachod & Kuhne, in the purchase and redemption of certain cotton and then held the cotton thus purchased and redeemed subject to a trust or charge for the benefit of said Knauth, Nachod & Kuhne. To the extent of said $98,005.58 and interest thereon from April 18, 1910, said cotton and the proceeds thereof equitably belongs to said Knauth, Nachod & Kuhne. The defendant William S. Lovell as Trustee in Bankruptcy of Knight, Yancey & Company stands merely in the place and stead of said bankrupts. Said Trustee has acquired or claims all of said cotton thus purchased and redeemed. The complainants, Knauth, Nachod & Kuhne, duly rescinded and do hereby again rescind the purchase of said foreign drafts and pretended bills of lading and have duly demanded and do hereby again demand that said bankrupts and said Trustee account for said moneys of said Knauth, Nachod & Kuhne, amounting to Ninety-eight thousand five and 58/100 dollars ($98,005.58) and for the cotton purchased and redeemed therewith and for the cotton purchased and redeemed with the fund or bank credit, including said moneys and for the proceeds thereof. Said bankrupts and said Trustee have refused said demands. The assets of said bankrupts amount to only about Six hundred thousand dollars ($600,000), while their liabilities amount to about Five million ninety thousand one hundred seventy-three and 84/100 dollars ($5,090,173.84). The complainants, Knauth, Nachod & Kuhne, have no adequate remedy at law. Neither the defendants

Latham & Company nor any other creditors of the bank- 49
rupts have any right to payment out of the moneys of said Knauth, Nachod & Kuhne or the proceeds thereof.

FOURTH—NON-PARTIES.

The members of the firm of Knight, Yancey & Company hereinbefore mentioned, though they may appear to be proper parties, are not made parties to this bill because they are not within the Northern District of Florida, the territorial jurisdiction of the Court.

FIFTH—PRAYER. 50

The complainants, Knauth, Nachod & Kuhne, hereby consent that the answer filed July 31, 1911, by the defendant, Louisville & Nashville Railroad Company to their original bill of complaint herein, stand as an answer to this amended bill and waive an answer under oath or affirmation by any defendant and pray for the determination and decree of the Court, as follows:

1. That the complainants, Knauth, Nachod & Kuhne, have duly rescinded the purchase by them of the foreign drafts and bills of lading hereinbefore set forth; and that the bankrupts, Knight, Yancey & Company, received and held certain remittances of money from New York, in- 51
cluding the moneys of said complainants, aggregating the sum of $98,005.58, and held said moneys of said complainants in trust for their benefit and held the entire remittances of which said moneys were a part subject to a trust or charge for the benefit of said complainants, to the extent of said sum of $98,005.58 and interest thereon from April 18, 1910.

2. That said bankrupts disbursed the moneys of said complainants and the entire fund or bank credit of which said moneys became a part in the purchase and redemp-

52 tion of certain cotton or the bills of lading therefor and then held said cotton or said bills of lading subject to a trust or charge for the benefit of said complainants, to the extent of said sum of $98,005.58 and interest thereon from April 18, 1910.

3. That Schedule 1 and Schedule 2 hereto annexed include certain bales of cotton which, or the bills of lading for which, were purchased or redeemed with the moneys of said complainants and, on proof thereof, what bales or part of the cotton set forth in each of said schedules respectively were purchased or redeemed with the moneys of said complainants and what bales or part with
53 the fund or bank credit of which the moneys of said complainants became a part; that a trust or charge in favor of said complainants be impressed on the bond in lieu of the cotton set forth in Schedule 1 and on the proceeds of the cotton set forth in Schedule 2 hereto annexed, to the extent that said cotton or the bills of lading therefor were purchased or redeemed with the moneys of said complainants or with the fund or bank credit of which said moneys became a part and, to the end that said trust or charge be enforced, that the defendants Edmond Latham, Charles W. Latham, Raoul Latham and American Surety Company of New York pay to said complainants the amount of said trust or charge on account of said bond and that
54 the defendant William S. Lovell as Trustee in Bankruptcy of Knight, Yancey & Company and First National Bank of Pensacola and American National Bank of Pensacola pay to said complainants out of the proceeds of the cotton set forth in said Schedule 2 the amount of said trust or charge on account thereof.

4. That the defendant, William S. Lovell as Trustee in Bankruptcy of Knight, Yancey & Company, has acquired or claims the cotton which, or the bills of lading for which, was or were purchased and redeemed with the

moneys of said complainants and with the fund or bank credit of which the moneys of said complainants were a part; that said defendant render an account of said moneys of said complainants, aggregating the sum of $98,005.58, and set forth a full, true and particular account of all and singular the cotton or other property that was purchased or redeemed therewith and of the cotton or other property that was purchased or redeemed with the fund or bank credit of which said moneys were a part; and that said account set forth the marks of the bales of cotton and what has become of the same and the value of any part thereof set forth in Schedule 1 and Schedule 2 hereto annexed. 55

56

5. That this bill of complaint be heard and determined in connection with the bill of complaint of the defendant William S. Lovell as Trustee in Bankruptcy (against the defendants Latham & Company and the defendant Louisville & Nashville Railroad Company) in this Court, the bill hereinbefore mentioned.

6. That the complainants, Knauth, Nachod & Kuhne, have such other, further and different relief as justice, equity and the circumstances of the case may require.

REEVES & WATSON,
Solicitors for Complainants,
Pensacola, Florida. 57

BRIESEN & KNAUTH,
Of Counsel for Complainants,
25 Broad Street,
New York, N. Y.

W. H. WATSON,
Of Solicitors and of Counsel for Complainants.

58 STATE OF NEW YORK }
County of New York } ss.:

AREND H. WEINGARDT, being duly sworn, says:

That he is a member of the firm of Knauth, Nachod & Kuhne, the complainants in the foregoing bill; that the complainants are co-partners pleading together and that he is authorized to make verification on behalf of his co-partners as well as on behalf of himself. That he has heard read the foregoing bill and knows the contents thereof and that the same is true to his own knowledge except as to the matters therein stated to be alleged on information and belief and that as to those matters he believes it to be true, except that the membership
59 of said firm is set forth as of the time when the suit was instituted.

AREND H. WEINGARDT.

Sworn to before me this }
17th day of April, 1914. }

FRANK F. KIRKPATRICK,
[L. S.] Notary Public, New York County.

60

SCHEDULE 1.

Cotton delivered to Latham & Company (pursuant to an order of the United States District Court for the Northern District of Florida, dated July 8, 1910) upon the giving of a forthcoming bond in the sum of $240,000.00; some of which cotton was subject, as are the bond and the proceeds thereof, to a trust or charge in favor of Knauth, Nachod & Kuhne:

Bales	New Marks	Old Marks		Shipper or place of shipment by Knight, Yancey & Co.
100	QFEC	46	QFEC	Knight, Yancey & Co., Selma
		25	JAP	F. F. Johnstone & Co.
		4	JIL	Do.
		25	JOY	Do.
		—		
100	QIFA	15	QIFA	SELMA
		39	OW*W	Sellers & Orman
		42	OJXW	Do.
		4	EUHW	Do.
		—		
100	REKO	50	REKO	Selma
		25	RUTT	C. Gunter Elmore
		25	RINO	Do.
		—		
100	QSGA	100	QSGA	Decatur
100	RLFO	25	RLFO	Selma
		25	SAD	F. F. Johnstone & Co.
		25	SKY	Do.
		25	SOX	Do.
		—		
100	RNOU	20	RNOU	Decatur
		7	AID	F. F. Johnstone & Co.
		25	SUE	Do.
		25	SEW	Do.
		23	SIQ	Do.
		—		
100	RUSG	15	RUSG	Decatur
		25	SODJ	C. Gunter Elmore
		29	SICW	Do.
		16	PLB	F. F. Johnstone & Co.
		15	AXKW	Roman Warehouse
		—		
100	REMI	24	REMI	Decatur
		76	ECPW	Sellers & Orman
		—		

	Bales	New Marks	Old Marks		Shipper or place of shipment by Knight, Yancey & Co.
64	100	PLEN	20	PLEN	Decatur
			65	PZPO	Thompson & Wallace
			15	VIC	F. F. Johnstone & Co.
	100	QARI	15	QARI	Decatur
			49	KYC	F. H. Lightfoot
			36	OSKA	Thompson & Wallace
	100	QFAB	15	QFAB	Decatur
			8	OSKA	Thompson & Wallace
			77	KYC	F. H. Lightfoot
	100	PURX	15	PURX	Decatur
			44	PZPO	Thompson & Wallace
65			41	KYC	F. H. Lightfoot
	100	PINS	15	PINS	Decatur
			45	PZPO	Thompson & Wallace
			40	KYC	F. H. Lightfoot
	100	RSON	100	RSON	Decatur
	50	RSRE	37	FOSS	Thompson & Wallace
			13	KYC	
	100	RSAT	25	OWLL	Thompson & Wallace
			37	FRAM	Do.
			6	TVAV	Do.
			7	QLAS	Do.
			25	AGRD	Do.
66	100	QSTR	40	KYC	F. H. Lightfoot
			16	TDNA	Thompson & Wallace
			7	OAKS	Do.
			37	KYC	F. H. Lightfoot
	100	QSGC	40	KYC	F. H. Lightfoot
			3	TOLB	Thompson & Wallace
			2	TOYS	Do.
			5	OWLL	Do.
			36	OSSO	Do.
			11	FOSS	Do.
			3	KYC	F. H. Lightfoot

Bales	New Marks	Old Marks	Shippers or place of Shipment by Knight, Yancy & Co.	67
100	RSIC	15 OTTO	Thompson & Wallace	
		3 JDNA	Do.	
		2 TOLB	Do.	
		4 TVAV	Do.	
		44 CAKS or OAKS	Do.	
		32 OWNS		
		—		
100	QSLL	42 KYC	F. H. Lightfoot	
		25 PWG	F. F. Johnstone & Co.	
		18 PVP		
		7 JDNA	Thompson & Wallace	
		3 OWLL	Do.	
		5 OLAS	Do.	
		—		
100	RSOM	80 KYC	F. H. Lightfoot	68
		20 JDNA	Thompson & Wallace	
		—		
100	QNCE or ONCE	65 KYC	F. H. Lightfoot	
		15 OWFW	Sellers & Orman	
		20 OLAS	Thompson & Wallace	
		—		
100	QSAT (B) or OSAT (B)	6 TOLB	Do.	
		12 SWST	Do.	
		63 OWNS	Do.	
		19 KYC	F. H. Lightfoot	
		—		
100	PHAL or PWAL	66 VBSO	Thompson & Wallace	
		14 PROS	Do.	69
		20 KYC	F. H. Lightfoot	
		—		
100	QSUR or OSUR	13 ONLY	Thompson & Wallace	
		14 OWLL	Do.	
		10 FOSS	Do.	
		63 KYC	F. H. Lightfoot	
		—		
100	RSBL	4 FRAM	Thompson & Wallace	
		23 ONLY	Do.	
		40 FROG	Do.	
		33 KYC	F. H. Lightfoot	
		—		

70	Bales	New Marks	Old Marks	Shippers or place of Shipment by Knight, Yancey & Co.
	20	PZLU	8 POST	Thompson & Wallace
			12 POLE	Do.
	25	QSAT	25 ONLY	Thompson & Wallace
	20	PSHE	20 KYC	F. H. Lightfoot
	20	PRIK	4 POLE	Thompson & Wallace
			7 PINT	Do.
			9 KYC	
	2635			

SCHEDULE 2.

71

Cotton claimed by Latham & Company, which was sold by William S. Lovell (pursuant to an order of the United States District Court for the Northern District of Florida, appointing him its Custodian thereof, dated July 8, 1910) and the proceeds of which are now on deposit by said Custodian until the rights of all parties interested therein can be determined; some of which cotton was subject, as are the proceeds thereof, to a trust or charge in favor of Knauth, Nachod & Kuhne:

	Bales	New Marks	Old Marks	Shipper or place of shipment by Knight, Yancey & Co.
	100	RSMX or RSMI	14 FERD	Thompson & Wallace
72			58 FRAT	Do.
			28 FROM	Do.
	100	RSCO	66 TOLB or FOLB	Thompson & Wallace.
			34 OMEG	Do.
	100	RSPZ or RSZT	22 JDNA	Do.
			5 POLE	Do.
			49 TPDO	Do.
			24 TSUN	Do.
	100	RSCE	13 JDNA	Do.
			87 FERD	Do.

Bales	New Marks	Old Marks		Shipper or place of shipment by Knight, Yancey & Co.	73
100	QSIY or OSIY	2	ONLY	Do.	
		52	OAKS	Do.	
		15	OPRA	Do.	
		31	OWLL	Do.	
100	RSEA	1	TVAV	Do.	
		3	SWST	Do.	
		2	YBSO or VBSO	Do.	
		16	FRAM	Do.	
		11	POST	Do.	
		33	PORK	Do.	
		20	PROS	Do.	
		5	TOLB or FOLB	Do.	
		9	KYC	F. H. Lightfoot	
23	PALS	23	PALS	Thompson & Wallace	74
50	POST or PSOT	50	POST	Do.	
40	PINT or PENT	40	PINT	Do.	
15	OPRA	15	OPRA	Do.	
2	KYC	2	KYC	F. H. Lightfoot	
29	XX	29	XX	Parker Mer. Co.	
57	FUSE	57	FUSE	Thompson & Wallace	
9	PILL	9	PILL	Do.	
81	OATS	81	OATS	Do.	
59	FUME or FUNE or FOME	59	FUME or FUNE or FOME	Do.	75
965					

Filed April 20, 1914.

76 **Trustee's Motion to Dismiss.**

IN THE COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA.

FRIEDRICH NACHOD and others AGAINST WILLIAM S. LOVELL as the custodian of certain property impounded by the above named court and as trustee in bankruptcy of Knight, Yancey & 77 Company; Latham & Company and others, Defendants.	In Equity.

The motion of William S. Lovell as the custodian of certain property impounded by the above named Court and as Trustee in Bankruptcy of Knight, Yancey & Company to dismiss the amended bill, etc. Comes William S. Lovell as the custodian of said property impounded by the above named Court and as Trustee in Bankruptcy of Knight, Yancey & Company and says that the amended bill exhibited against him and others in the above styled cause is insufficient in point of law and moves to dismiss
78 the same upon the following grounds:—

1st. The Bill regarded as a bill of intervention is not in subordination to and in recognition of the propriety of the suit of William S. Lovell etc., against Latham & Company referred to in the amended bill.

2nd. The purposes of the Bill regarded as a bill of intervention are not germane to those of the suit of William S. Lovell as Trustee, etc. against Latham & Company referred to in the original Bill.

3rd. The Bill may not be maintained as an original bill because it appears from the averments of the amended

bill that at the time this suit was brought there was no personal jurisdiction of the Court over the necessary defendants, Latham & Company and the partners composing said firm, and over this respondent; nor was the property the subject matter of the suit within the Court's jurisdiction. 79

4th. Complainants show no right, title or interest in any of the property, the subject matter of the suit, nor any right to personal relief against any defendant.

5th. The amended Bill is a departure from the original.

80

6th. It affirmatively appears from the averments of the Bill that the money which purchased the property, the subject matter of this suit, was not the money of complainants.

7th. It affirmatively appears from the averments of the Bill that the money which purchased the property, or the proceeds thereof, the subject matter of this suit, was money advanced to Knight, Yancey & Company on over-draft by the First National Bank of Decatur, or other bank at Decatur, and that whether the foreign exchange referred to in the original Bill with the drafts on Van Guerpen, therein referred to, were discounted by said Decatur bank or merely taken for collection their proceeds went to reimburse such Decatur bank, and that the bankrupts, Knight, Yancey & Company never received the same nor had any interest therein. 81

8th. It does not appear with sufficient certainty that the money of complainants ever passed into the control of or became subject to the disposition of the bankrupts.

9th. In so far as the Bill seeks to have a trust or charge declared on assets in the hands of the Trustee in Bankruptcy as such because the court of bankruptcy and

82 not this Court is the proper forum for the determination of such contention.

10th. Because the Bill is prolix and redundant.

11th. The averments of the Bill are inconsistent in that in paragraph 5 it is averred:

"Said Knight, Yancey & Company utilized said instrumentalities for the further purpose of obtaining from said First National Bank of Decatur the allowance of over-drafts in payment of the price of certain cotton purchased by them," while in the seventh paragraph it is averred:

83 "After said First National Bank of Decatur had received said monies, including the monies of said Knauth, Nachod & Kuhne, the same were all disbursed by said Bank at the instance of said Knight, Yancey & Company in the purchase and redemption of certain cotton, including a part of the cotton or the bills of lading therefor set forth in Schedule 1 and Schedule 2 hereto annexed".

12th. Because the Bill is without equity.

13th. Because it affirmatively appears from the Bill that the money of complainants was by the bankrupts converted into cotton and the cotton into which such
84 money was convered is not described or referred to or traced with sufficient certainty.

14th. Because it affirmatively appears from the Bill that the money of complainants was converted by the bankrupts into a mass of cotton into only a part of which complainants seek to trace their money and they do not identify that portion of such mass into which they seek to trace their money.

15th. And for matter in abatement this respondent says that this Bill ought not to be maintained because prior to the institution of this suit the thirty-six hundred

bales of cotton claimed by Latham & Company and by 85
the respondent as Trustee in bankruptcy of Knight, Yancey & Company had either been released to Latham & Company by the order of this Court, or converted into money by this respondent, and that both the bond given by Latham & Company referred to in the bill and the proceeds of the nine hundred and sixty-five bales of cotton converted into money by this respondent were and were held for the sole purpose of abiding the result of the suit of this respondent as Trustee in Bankruptcy of Knight, Yancey & Company against Latham & Company, and that the rest was not being administered by this Court in such sense that a third party might file either an original bill or bill of intervention or any other 86
action at law or in equity to determine a claim thereto independent of the claim involved in the controversy between this respondent as such Trustee and Latham & Company; that necessary respondents to this Bill, namely Latham & Company and the partners composing said firm, as well as this respondent as such Trustee in bankruptcy of Knight, Yancey & Company did not reside in and were not found within the jurisdiction of this Court, and that such Trustee in Bankruptcy was not appointed by this Court; that none of the bankrupts at the time of the institution of this suit resided in nor have since resided in nor were found within the jurisdiction of this Court, and that the administration of the bankrupt 87
estate of Knight-Yancey & Company was, at the time of this suit and is now, pending in the Northern District of Alabama and that this suit is not such that substituted service might be had upon such non-resident respondents.

PERCY, BENNERS & BURR,
BLOUNT & BLOUNT & CARTER,
Solicitors for William S. Lovell as Trustee in Bankruptcy of Knight, Yancey & Company and as Custodian of the funds referred to in the original Bill.

88 STATE OF ALABAMA:
Jefferson County:

WILLIAM S. LOVELL, being duly sworn deposes and says that the statements of fact contained in the paragraph numbered fifteen above are true.

WILLIAM S. LOVELL.

Sworn to and subscribed before me this 20th day of August, 1914.

ANNIE L. PEACE,
(SEAL) Notary Public.

Filed August 22, 1914.

89

Latham & Co.'s Motion to Dismiss.

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA.

FREDERICK NACHOD and others, Complainants

AGAINST

WILLIAM S. LOVELL as custodian, etc. and others, Defendants.

In Equity

90

Come now Edmond Latham, Charles W. Latham and Raoul Latham, trading under the partnership name of Latham & Company, made defendants herein, and move the Court that it dismiss the Bill of Complaint and the amended Bill of Complaint filed herein by Frederick Nachod and others, complainants, for the reasons and caused specified as follows, to-wit:

FIRST: If and in so far as the amended Bill purports to be a supplemental bill it does not comply with

the equity rules prescribed by the Supreme Court of 91
the United States.

SECOND: If and in so far as the amended Bill purports to amend the original Bill herein it sets up a state of facts and grounds for relief wholly different from those set forth in the original Bill and prays and prays for wholly different relief and is a departure from the case stated in the original Bill and inconsistent therewith and should not be allowed.

THIRD: The original Bill herein and said amended Bill on their faces do not state such facts as constitute a valid cause of action in equity against these defendants.
92

FOURTH: The original Bill and the amended Bill herein on their faces state such facts as to show that complainants are not entitled to the relief prayed for as against these defendants.

FIFTH: The original Bill and the amended Bill on their faces show that no equitable relief against these defendants can be granted for the reason that the facts alleged show that the relief, if any should be against the Trustee in Bankruptcy alone, and cannot be granted in this suit.

SIXTH: The original Bill and the amended Bill on their faces do not show such a state of facts as would 93
justify a court of equity in impressing the thirty-six hundred bales of cotton, or any part thereof claimed by Latham & Company with a trust in favor of complainants.

Wherefore these defendants pray that the original Bill of Complaint and the amended Bill herein may be dismissed at complainants' costs. And they pray for such further orders and decrees in the premises as may be just and proper.

E. C. MAXWELL,
Solicitor for the above named Defendants.

Filed August 22, 1914.

94 **Surety's Co.'s Motion to Dismiss.**

IN THE

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF FLORIDA.

FREDERICK NACHOD AND OTHERS, Complainants AGAINST 95 WILLIAM S. LOVELL as CUSTODIAN, ETC. and OTHERS, Defendants.	In Equity.

Comes now the American Surety Company of New York, made defendant herein, and moves the Court that it dismiss the Bill of Complaint and the amended Bill of Complaint filed herein by Frederick Nachod and others, complainants, for the reasons and causes specified as follows, to wit:

FIRST: If and in so far as the amended Bill purports to be a supplemental bill it, does not comply with
96 the equity rules prescribed by the Supreme Court of the United States.

SECOND: If and in so far as the amended Bill purports to amend the original Bill herein it sets up a state of facts and grounds for relief wholly different from those set forth in the original Bill and prays for, wholly different relief and is a departure from the case stated in the original Bill and inconsistent therewith and should not be allowed.

THIRD: The original Bill herein and said amended Bill on their faces do not state such facts as constitute

a valid cause of action in equity against these defendants. 97

FOURTH: The original Bill and the amended Bill herein on their faces state such facts as to show that complainants are not entitled to the relief prayed for as against these defendants.

FIFTH: The original Bill and the amended Bill on their faces show that no equitable relief against this defendant can be granted for the reason that the facts alleged show that the relief, if any, should be against the Trustee in bankruptcy alone, and cannot be granted in this suit. 98

SIXTH: The original Bill and the amended Bill on their faces do not show such a state of fact as would justify a court of equity to impressing the thirty-six hundred bales of cotton, or any part thereof claimed by Latham & Company, with a trust in favor of complainants.

WHEREFORE this defendant prays that the original Bill of complaint and the amended Bill herein may be dismissed at complainants cost. And it prays for such further orders and decrees in the premises as may be just and proper.

E. C. MAXWELL, 99
Solicitor for the above named Defendant.

Filed August 22, 1914.

100 **Complainants' Objections to Motions.**

DISTRICT COURT OF THE UNITED STATES,

NORTHERN DISTRICT OF FLORIDA.

FRIEDRICH NACHOD and others,
Complainants,

AGAINST

101 WILLIAM S. LOVELL, as the Custodian of certain property impounded by the above named Court and as Trustee in Bankruptcy of Knight, Yancey & Company; and others,
Defendants.

In Equity.

The complainants, Knauth, Nachod & Kuhne, object to the motion of the defendant Lovell as Custodian and as Trustee, to dismiss the amended bill of the complainants, and to the motion of the defendants Latham, to dismiss the bill and the amended bill of the complainants, and to the motion of the defendant American Surety
102 Company of New York, to dismiss the bill and the amended bill of the complainants. Without waiving other grounds of objection, the complainants specify the following objections to each of said motions:

1. So far as any of said motions is based both on a want of jurisdiction and a want of equity, said grounds are repugnant and exclusive. A motion to dismiss for want of jurisdiction admits the cause of action alleged in the amended bill and errors or defects, if any, must be disregarded, because they are curable by amendment (Rules 19 and 28, Present Equity Rules), and because to predicate a want of jurisdiction is to predicate a want

of power to pass on the merits of the amended bill. A motion to dismiss for want of equity admits jurisdiction and asks the Court to pass on the merits of the amended bill.

2. The Court has already determined that it has jurisdiction (upon defendants' motions to quash service of process and to dismiss the original bill of complaint) and is not authorized to review its own decisions in that regard.

3. None of the defendants has a right to have his or their or its motion to dismiss on the ground of want of equity called up and disposed of before final hearing. None of them has answered the amended bill or waived his or their or its right to answer the same or conceded the claim of the complainants (except for the purposes of his or their or its motion) and the Court is not in a position to exercise a discretion under Rule 29 of the present Equity Rules to allow any of said motions to be called up and disposed of before final hearing. Said discretion should be exercised, complainants submit, only in case the controlling facts in the case are conceded for all purposes, either by answer or otherwise, so that a disposal of the points of law presented will be necessary and will, in effect, finally dispose of the whole or a material part of the cause of action, whether in favor of complainants or defendants.

4. The application to dismiss the amended bill for want of jurisdiction is in effect an application to have the government of the United States, acting through its judicial department, deprive the complainants of their property without due process of law, in contravention of Amendment V and other provisions of the Constitution of the United States. The construction and application of the constitutional inhibition was involved in the original proceedings, set forth in the amended bill of the

106 complainants, as well as in this case. The relief sought in said original proceedings gave the Court exclusive jurisdiction and that carried with it the jurisdiction and duty to hear and determine and enforce the rights of all claimants of the property impounded and sequestered. To disclaim said ancillary jurisdiction or duty is to violate said constitutional inhibition.

5. The grounds, on which each of said motions is made, are not in accord with the allegations of the amended bill and are untenable in point of law.

Dated April 14, 1915.

WATSON & PASCO,
107 Solicitors for Complainants,
Pensacola, Florida.

BRIESEN & KNAUTH,
Counsel for Complainants,
25 Broad Street,
New York, N. Y.

W. H. WATSON,
Of solicitors and counsel for Complainants.

Filed June 28, 1915.

108

Order of Dismissal.

109

IN THE DISTRICT COURT OF THE UNITED STATES,

NORTHERN DISTRICT OF FLORIDA.

FRIEDERICH NACHOD, MAX JAFFE, WILHELM KNAUTH, AUGUST STERN, OSCAR L. GUBELMAN, AREND H. WEINGARDT, ROLLIN C. NEWTON, MARY W. KNAUTH, and PERCIVAL KUHNE, partners as Knauth, Nachod & Kuhne,
Complainants,

110

vs.

WILLIAM S. LOVELL, as the custodian of certain property impounded by the above named court, and as Trustee in Bankruptcy of Knight, Yancey & Company; EDMOND LATHAM, CHARLES W. LATHAM, RAOUL LATHAM, composing the firm of Latham & Company; AMERICAN NATIONAL BANK OF PENSACOLA; FIRST NATIONAL BANK OF PENSACOLA; LOUISVILLE & NASHVILLE RAILROAD COMPANY; and AMERICAN SURETY COMPANY OF NEW YORK,
Defendants.

In Equity.

111

The above styled cause coming on for hearing on the motions filed by the defendants, William S. Lovell, as Trustee in Bankruptcy of Kinght, Yancey & Company, Latham & Company, and American Surety Company, to

112 dismiss the amended bill of complaint, and on the objections of the complainants to said motions, and same having been argued by counsel for the respective parties, it is ordered that the objections to said motions be overruled.

And the court having considered said motions to dismiss and the said amended bill of complaint, and being of the opinion that this court is without jurisdiction of the subject matter of the litigation, and that the proper forum for the relief sought is the bankruptcy court of the Northern District of Alabama,

It is therefore ordered, adjudged and decreed that said amended bill be and it is hereby dismissed at the cost
113 of the complainants.

Done and ordered at Pensacola, Florida, this 10th day of July, 1915.

WM. B. SHEPPARD,
District Judge.

Filed July 10, 1915.

114

Assignment of Errors. 115

DISTRICT COURT OF THE UNITED STATES,

NORTHERN DISTRICT OF FLORIDA.

FRIEDRICH NACHOD and others,
Complainants,

AGAINST

WILLIAM S. LOVELL, as the Custodian of certain property impounded by the above named Court and as Trustee in Bankruptcy of Knight, Yancey & Company; and others,
Defendants. 116

The complainants, Knauth, Nachod & Kuhne (being about to ask for the allowance of an appeal to the Supreme Court of the United States from the order or decree of this Court made and entered herein on or about the 10th day of July, 1915) hereby make the following assignment of errors in the said order and in the proceedings of the Court:

1. The District Court erred in dismissing the amended bill of complaint of the complainants, Knauth, Nachod & Kuhne. It had impounded and taken possession of property which equitably belonged to said complainants and holds the proceeds thereof. 117

Its jurisdiction is exclusive of all other tribunals. The said complainants are entitled to have their claim to said property and its proceeds heard and determined herein and the said order or decree, dismissing their bill for want of jurisdiction, deprives them of their property without due process of law, in contravention of Amendment V and other provisions of the Constitution of the United States.

118 2. The District Court erred in holding that the property in question is *in custodia legis* of the bankruptcy court for the Northern District of Alabama. Said bankruptcy court has never had possession or jurisdiction thereof. Said property had been transferred by the bankrupts and was held adversely to their Receivers and to their Trustee. The conditions on which said transfer is voidable must be established and the transfer must be set aside before said bankruptcy court will have any jurisdiction of the same.

3. The District Court erred in holding the law against the complainants, Knauth, Nachod & Kuhne. The order
119 or decree dismissing the amended bill of said complainants is contrary to the facts admitted in the cause and contrary to law and contrary to equity.

WATSON & PASCO,
Solicitors for complainants,
Pensacola, Florida.

BRIESEN & KNAUTH,
Counsel for Complainants,
25 Broad Street,
New York, N. Y.

W. H. WATSON,
Of Solicitors and Counsel.

Filed July 10, 1915.

120

Appeal.

121

DISTRICT COURT OF THE UNITED STATES,

NORTHERN DISTRICT OF FLORIDA.

FRIEDRICH NACHOD and others,
Complainants,

AGAINST

WILLIAM S. LOVELL, as the custodian of certain property impounded by the above named Court and as Trustee in Bankruptcy of Knight, Yancey & Company and others,
Defendants.

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The complainants, Max Jaffe, Wilhelm Knauth, August Stern, Oscar L. Gubelman, Arend H. Weingardt, Rollin C. Newton, Mary W. Knauth and Percival Kuhne (being the survivors of themselves and Friedrich Nachod, deceased, and with him formerly composing the firm of Knauth, Nachod & Kuhne) conceive themselves aggrieved by the order or decree made and entered, in the above 123
entitled cause, on the 10th day of July, 1915, and do hereby appeal from said order or decree to the Supreme Court of the United States, for the reasons set forth in the assignment of errors which is presented and to be filed herewith. The appeal is taken to said Supreme Court, pursuant to Sec. 238 of The Judicial Code, because the jurisdiction of the above named court is in issue and the case involves the construction and application of the Constitution of the United States and draws in question the constitutionality of certain laws of the United States. That is to say the record presents the question whether the laws authorizing the court to im-

124 pound and hold the property in question, under the facts and circumstances of the case, are not unconstitutional and void unless they also vest it, either expressly or by necessary implication, with jurisdiction to hear and determine the claim of the complainants to said property.

WHEREFORE the said complainants pray that this appeal be allowed; and that a transcript of the record of the proceedings and papers on which said order or decree was made be duly authenticated and sent to the Supreme Court of the United States.

WATSON & PASCO,
Solicitors for Complainants,
125 Pensacola, Florida.

BRIESEN & KNAUTH,
Counsel for Complainants,
25 Broad Street,
New York, N. Y.

W. H. WATSON,
Of Solicitors and Counsel.

IT IS ORDERED that the foregoing appeal be and hereby is allowed as prayed for.

Dated this 10th day of July, 1915.

WM. B. SHEPPARD,
District Judge.

126 Filed July 10, 1915.

Bond on Appeal.

DISTRICT COURT OF THE UNITED STATES OF AMERICA

FOR THE NORTHERN DISTRICT OF FLORIDA.

FRIEDRICH NACHOD, MAX JAFFE and others, formerly composing the firm of KNAUTH, NACHOD AND KUHNE,
Complainants,

vs.

WILLIAM S. LOVELL, as the Custodian of certain property impounded by the above named Court and as Trustee in Bankruptcy of Knight, Yancey and Company,
Defendants.

KNOW ALL MEN BY THESE PRESENTS, That Knauth, Nachod & Kuhne as principal, and NATIONAL SURETY COMPANY, a corporation under the laws of the State of New York, with its principal place of business at No. 115 Broadway, in the City, County and State of New York, as surety, are held and firmly bound unto the above named William S. Lovell as said Custodian and Trustee; Edmond Latham, Charles Latham and Raoull Latham, composing the firm of Latham & Company; and the American Surety Company of New York, in the sum of Five Hundred ($500.00) Dollars to be paid to the said obligees, their executors, administrators, successors and assigns for the payment of which well and truly to be made, said principal and surety bind themselves, their heirs, executors, administrators and assigns, jointly and severally, firmly by these presents. Sealed and dated the 6th day of July, 1915.

130 WHEREAS, the above named Knauth, Nachod & Kuhne are about to prosecute an appeal to the Supreme Court of the United States, to reverse the order or decree rendered in the above entitled suit, by a Judge of the District Court of the United States for the Northern District of Florida.

NOW, THEREFORE, the condition of this obligation is such, that if the above named Knauth, Nachod & Kuhne shall prosecute the said appeal to effect, and answer all damages and costs if they fail to make said appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

131 KNAUTH, NACHOD & KUHNE,
By GEO. T. HOGG, of Counsel.
NATIONAL SURETY COMPANY,
By WM. A. THOMPSON,
Resident Vice-President.

Attest:
N. V. TYNAN,
[SEAL.] Resident Assistant Secretary.

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AFFIDAVIT, ACKNOWLEDGMENT, AND JUSTIFICATION BY GUARANTEE OR SURETY COMPANY. 133

STATE OF NEW YORK }
County of New York } ss.:

On this 6th day of July one thousand nine hundred and fifteen before me personally came Wm. A. Thompson, known to me to be the Resident Vice-President of the NATIONAL SURETY COMPANY, the corporation described in and which executed the within and foregoing Bond of Knauth, Nachod & Kuhne as a surety thereon, who, being by me duly sworn, did depose and say that he resides in the City of New York, State of New York; 134 that he is the Resident Vice-President of said Company, and knows the corporate seal thereof; that the said NATIONAL SURETY COMPANY, is duly and legally incorporated under the laws of the State of New York; that said Company has complied with the provisions of the Act of Congress of August 13th, 1894; that the seal affixed to the within Bond of Knauth, Nachod & Kuhne is the corporate seal of said National Surety Company, and was thereto affixed by order and authority of the Board of Directors of said Company; that he signed his name thereto by like order and authority as Resident Vice-President of said Company; that he is acquainted with N. V. Tynan and knows him to be the Resident Assistant 135 Secretary of said Company; that the signature of said N. V. Tynan subscribed to said Bond is in the genuine handwriting of said N. V. Tynan, and was thereto subscribed by order and authority of said Board of Directors, and in the presence of said deponent; that the assets of said Company, unencumbered and liable to execution exceed its debts and liabilities of every nature whatsoever, by more than the sum of Three Million Five Hundred Thousand ($3,500,000.) Dollars.

That R. R. Turnbull of Pensacola, Florida is agent to

136 acknowledge service for said Company in the Judicial District wherein this bond is given.

WM. A. THOMPSON

Sworn to, acknowledged before me, and subscribed in my presence this 6th day of July, 1915.

[SEAL.] P. P. MARCONE

Notary Public for N. Y. County #2380; etc.

Approved July 10, 1915.

WM. B. SHEPPARD, District Judge.

Filed July 10, 1915.

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137 **Citation.**

DISTRICT COURT OF THE UNITED STATES

NORTHERN DISTRICT OF FLORIDA.

FRIEDRICH NACHOD and others,
Complainants,

AGAINST

WILLIAM S. LOVELL, as the Custodian of certain property impounded by the above named Court and as Trustee in Bankruptcy of Knight, Yancey & Company;
Defendants.

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THE PRESIDENT OF THE UNITED STATES OF AMERICA,

To William S. Lovell, as the Custodian of certain property impounded by the above named Court and as Trustee in Bankruptcy of Knight, Yancey & Company; Edmond Latham, Charles Latham and Raoul Latham composing the firm of Latham & Company; and the American Surety Company of New York—GREETING:

YOU ARE HEREBY CITED and admonished to be and appear in the Supreme Court of the United States, at

the City of Washington in the District of Columbia, 139
thirty days after the date of this citation (pursuant to an appeal allowed and filed in the office of the Clerk of the District Court of the United States for the Northern District of Florida, wherein Max Jaffe, Wilhelm Knauth, August Stern, Oscar L. Gubelman, Arend H. Weingardt, Rollin C. Newton, Mary W. Knauth, and Percival Kuhne, being the survivors of themselves and Friederich Nachod, deceased, and with him formerly composing the firm of Knauth, Nachod & Kuhne, are appellants and you are appellees) to show cause, if any there be, why the order or decree rendered against said appellants, as in said appeal mentioned, should not be reversed and why speedy justice should not be done the 140
parties in that behalf.

WITNESS Hon. WILLIAM B. SHEPPARD, Judge of the District Court of the United States for the Northern District of Florida, this 10th day of July, 1915.

WM. B. SHEPPARD,
District Judge.

Service for W. S. Lovell accepted this July 10, 1915.

PERCY, BENNERS & BURR,
BLOUNT & BLOUNT & CARTER,
Solicitors for Lovell.

141

Service on behalf of Edmond Latham, Charles Latham, and Raoul Latham, composing the firm of Latham & Company, is hereby accepted, and service on behalf of American Surety Company is also hereby accepted.

E. C. MAXWELL,
Solicitor for said defendants.

Filed July 10, 1915.

142 **Praecipe on Appeal.**

DISTRICT COURT OF THE UNITED STATES,

NORTHERN DISTRICT OF FLORIDA.

FRIEDRICH NACHOD, and others, Complainants, AGAINST 143 WILLIAM S. LOVELL, as Custodian etc., and as Trustee etc., and others Defendants.	In Equity No. 4.

Pursuant to rules 75-76 of the present Equity Rules, the complainants Knauth, Nachod & Kuhne hereby indicate the following as the papers to be incorporated in the transcript of record on their appeal to the Supreme Court of the United States from the decree herein of July 10, 1915, to wit:

1. The amended bill of complaint.

144 2. The written motion to dismiss said bill by the defendant Lovell, as Custodian and Trustee.

3. The written motion to dismiss said bill by the defendants composing the firm of Latham and Company.

4. The written motion to dismiss said bill by the defendant American Surety Company of New York.

5. The written objections by complainants to said motions.

6. The decree dismissing said bill.

7. The Assignment of Errors. 145

8. The appeal and the allowance thereof.

9. The bond on appeal.

10. The citation on appeal.

WATSON & PASCO,
Solicitors for Appellants,
Pensacola, Florida.

BRIESEN & KNAUTH,
Counsel for Appellants,
25 Broad Street,
New York, N. Y. 146

W. H. WATSON,
Of Counsel.

Due service of a copy of the foregoing *præcipe* is admitted this 28th day of July, 1915.

PERCY, BENNERS & BURR,
BLOUNT & BLOUNT & CARTER,
Solicitors and of Counsel for defendant William S. Lovell, as Custodian, etc., and as Trustee, etc.
E. C. MAXWELL,
Solicitors and of Counsel for the defendants, members of the firm of Latham & Company and for American Surety Company of New York. 147

Filed July 28, 1915.

148

Order of Enlargement.

DISTRICT COURT OF THE UNITED STATES,

NORTHERN DISTRICT OF FLORIDA.

FRIEDRICH NACHOD and others,
Complainants,

AGAINST

WILLIAM S. LOVELL, as Custodian etc. and as Trustee etc. and others,
Defendants.

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This cause came on to be further heard at this time and was submitted by counsel for complainants, and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as following; viz.:

That the time for certification and filing of the transcript of the record upon the appeal herein, allowed July 10, 1915, be and the same hereby is extended for the period of thirty days from August 9, 1915.

Dated August 9, 1915.

WM. B. SHEPPARD,
District Judge.

150

We hereby consent to the above order.

PERCY, BENNERS & BURR,
BLOUNT & BLOUNT & CARTER,
Solicitors for defendant Lovell as custodian etc. and as trustee etc.

E. C. MAXWELL,
Solicitor for defendants Latham and American Surety Company of New York.

Filed August 9, 1915.

Further Order of Enlargement. 151

IN THE DISTRICT COURT OF THE UNITED STATES,

NORTHERN DISTRICT OF FLORIDA.

FRIEDRICH NACHOD *et al.*,
Complainants,

vs.

WM. S. LOVELL, as custodian, etc., and as trustee, etc., *et al.*,
Defendants. 152

This cause came on to be further heard at this time, and was submitted by counsel for complainants, and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows, to wit:

That the time for certification and filing of the transcript of the record upon the appeal herein allowed July 10, 1915, be, and the same is hereby, extended for the period of thirty days from September 6, 1915.

Dated September 4th, 1915.

WM. B. SHEPPARD, 153
District Judge.

We hereby consent to the above order.

BLOUNT & BLOUNT & CARTER,
Solicitors for Defendant Lovell, as Custodian, etc., and as Trustee, etc.

E. C. MAXWELL,
Solicitor for Defendants Latham & Company, and American Surety Company of New York.

154 **Authentication of Record.**

UNITED STATES DISTRICT COURT,
Northern District of Florida. } ss.:

I, FREDERICK W. MARSH, Clerk of said Court, do hereby certify that the foregoing is a true and correct transcript of the papers mentioned in the *præcipe* of the complainants in the cause in equity therein set forth and constitute the record and proceedings of this court on the appeal to the Supreme Court of the United States in said cause, no *præcipe* having been filed by any of the defendants, and no opinion in writing having been ren-
155 dered by the District Judge on granting the motions to dismiss; and that said record remains on file in said cause in my office as Clerk of said Court.

IN WITNESS WHEREOF I do hereto set my hand and affix the seal of said court at the City of Pensacola, Florida, this 6th day of September, 1915.

FREDERICK W. MARSH,
[L. S.] Clerk.

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